

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010080156

ORDER GRANTING MOTION TO
DISMISS

On September 9, 2009, Capistrano Unified School District (District), filed a motion to dismiss Student's due process hearing request (complaint) on the following grounds: 1) failure to amend the complaint consistent with the August 16, 2010 OAH order on District's NOI; 2) mootness of Student's compensatory education claim prior to the date the amendment was filed; and 3) unavailability of the proposed attorney fee remedy from OAH. On September 13, 2010, Student filed an opposition contending that the amendment rendered the complaint sufficient and that the remedy request was not moot. As discussed below, the matter must be dismissed pursuant to the August 16, 2010 OAH order on District's NOI because Student failed to amend the complaint consistent with that order.

Student's first complaint, filed on August 5, 2010, alleged a single issue:

For the 2009-2010, school year beginning with the IEP dated November 30, 3009. Did [District] fail and deny a free appropriate public education. [¶] (A) By failing to adhere to the requirements of EC 56043(i). By failing to provide speech language services. [Punctuation same as original.]

District filed an NOI. On August 16, 2010, the first amended complaint was found to be insufficient on the ground that Student had failed to allege a description of the nature of the problem and facts related to the problem. The order on District's NOI allowed Student 14 days to file an amended complaint that complied with the pleading requirements set forth in Title 20 United States Code section 1415(b)(7)(A)(ii).

To be sufficient with the meaning of Title 20 United States Code section 1415(b)(7)(A)(ii), a complaint must contain: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to

participate in resolution sessions and mediation. (See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

On August 23, 2010, Student filed an “amended” complaint that did not add any factual allegations and only slightly changed the issue to read:

For the 2009-2010, school year beginning with the IEP dated November 30, 3009. Did [District] fail and deny a free appropriate public education. [¶]
(A) *By failing to implement the IEP of November 30, 2009, and* by failing to adhere to the requirements of EC 56043(i), *By failing to provide speech language services.* [Emphasis added, punctuation same as original.]

Student’s non-substantive amendment of the complaint to add the phrase “By failing to implement the IEP of November 30, 2009” to the issue statement of the complaint did not render the pleading sufficient by providing a description of the problem and facts relating to the problem. Thus, the purported “amendment” did not fulfill the requirements of the August 16, 2010 OAH order on District’s NOI. Accordingly, the matter must be dismissed.

IT IS SO ORDERED.

Dated: September 20, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings